

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

AMYMARIE L.,
Appellant,

v.

DEPARTMENT OF CHILD SAFETY AND M.P.,
Appellees.

No. 2 CA-JV 2020-0021
Filed June 16, 2020

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f);
Ariz. R. P. Juv. Ct. 103(G).

Appeal from the Superior Court in Pima County
No. JD20170558
The Honorable Wayne E. Yehling, Judge

AFFIRMED

COUNSEL

Law Office of Ransom Young P.L.L.C., Tucson
By Ransom Young
Counsel for Appellant

Mark Brnovich, Arizona Attorney General
By Dawn R. Williams, Assistant Attorney General, Tucson
Counsel for Appellee Department of Child Safety

MEMORANDUM DECISION

Judge Eckerstrom authored the decision of the Court, in which Presiding Judge Eppich and Judge Espinosa concurred.

ECKERSTROM, Judge:

¶1 Amymarie L. appeals the juvenile court's February 2020 ruling terminating her parental rights to her daughter, M.P., born in April 2008, based on length of time in care.¹ See A.R.S. § 8-533(B)(8)(c). She challenges the sufficiency of the evidence to support that ground. For the following reasons, we affirm.

Factual and Procedural Background

¶2 We view the evidence in the light most favorable to affirming the juvenile court's ruling. See *Christina G. v. Ariz. Dep't of Econ. Sec.*, 227 Ariz. 231, ¶ 13 (App. 2011). In October 2017, nine-year-old M.P., her twelve-year-old brother D.P., their mother Amymarie, and her wife C.L. went on a camping trip. During the trip, Amymarie and C.L. shot at the children with a BB gun "to see if they could hit a moving target." D.P. was struck multiple times on his wrist, arm, stomach, and leg, resulting in bleeding and bruising. The next week at school, D.P. wrote an essay describing the incident, which his teacher reported to the Department of Child Safety (DCS). During subsequent interviews, both children also revealed that Amymarie often "popped" them "with a le[a]ther belt on their bare bottoms," leaving red marks and causing pain.

¶3 DCS took temporary custody of the children and filed a petition asserting that M.P. and D.P. were dependent as to Amymarie due to abuse and neglect. Specifically, the petition alleged that Amymarie had shot at the children with a BB gun; hit D.P. multiple times, causing injuries; and refused to seek medical attention. In addition, it alleged that Amymarie "pop[ped]" the children "with a leather belt on bare skin when they misbehav[e]d." After a contested dependency hearing, the juvenile

¹The juvenile court also terminated the parental rights of M.P.'s father, whose separate appeal was dismissed. *Jason P. v. Dep't of Child Safety*, No. 2 CA-JV 2020-0020 (Ariz. App. Mar. 30, 2020) (order).

AMYMARIE L. v. DEP'T OF CHILD SAFETY
Decision of the Court

court found DCS had proven the allegations of abuse but not neglect and, therefore, adjudicated the children dependent.²

¶4 In June 2018, Amymarie filed a motion for return of the children, pursuant to Rule 59, Ariz. R. P. Juv. Ct., asserting she was compliant with the case plan and had started attending therapy. DCS opposed the motion, and the children's counsel sought to withdraw because "a conflict existed between the minors' positions." The juvenile court granted the motion to withdraw and appointed separate attorneys to represent each of the children. Thereafter, D.P. supported Amymarie's Rule 59 motion, while M.P. opposed it. During a hearing on the motion, Amymarie withdrew her request with respect to M.P. While the court expressed "concerns regarding [Amymarie's] emotional availability to [D.P.], her bond to him, her refusal to accept responsibility for physically abusing [D.P.] and her inability to recognize any parenting shortcomings on her part," the court concluded that "such concerns do not by themselves justify [D.P.'s] continued removal from [Amymarie's] home and can be addressed while [D.P.] resides in the home." The court therefore granted Amymarie's motion for return of D.P., subject to a plan of transition.

¶5 In July 2019, the juvenile court found the status of a dependency no longer existed as to D.P. and dismissed the proceeding as to him. Approximately two months later, DCS filed a motion for termination of parent-child relationship between M.P. and Amymarie based on the ground of length of time in care (fifteen months or longer).

¶6 After a four-session contested severance hearing, the juvenile court found DCS had established the time-in-care ground. It determined that M.P. "had been continuously in out-of-home care for more than fifteen months," that DCS had "made a diligent effort to provide reunification services," and that Amymarie had "taken no responsibility for abusing . . . [M.P.]" The court acknowledged that Amymarie had "always been willing to engage in [certain] services," but it pointed out that she "is unwilling" to engage in those designed "to address any deficiencies she has as a parent or, more important, those aspects of her background and personality which have led her to be a physically and emotional[ly] abusive parent." The court also noted that Amymarie "is unwilling to acknowledge how her emotional abuse has affected [M.P.], blaming [M.P.] exclusively for the reasons she was brought into care," and that her attitude toward and

²Approximately two months later, in May 2018, Amymarie pled guilty to one count of child abuse of D.P. based on the BB gun incident.

AMYMARIE L. v. DEP'T OF CHILD SAFETY
Decision of the Court

emotional abuse of M.P. “are unlikely to change.” The court also found that termination of the parent-child relationship was in M.P.’s best interests.

¶7 The juvenile court recognized the “arguably anomalous result” of D.P. being returned to Amymarie and her parental rights to M.P. being terminated. The court, however, pointed out that D.P. and M.P. “are very different children” and that D.P. “appears to have been treated as the favored child.” It additionally noted that while D.P. wanted to live with Amymarie, M.P. “expressed happiness” with her current placement. The court thus granted the motion for termination of the parent-child relationship. This appeal followed.

Discussion

¶8 Amymarie argues the juvenile court erred in terminating her parental rights based on length of time in care. “[W]e will affirm a termination order that is supported by reasonable evidence.” *Jordan C. v. Ariz. Dep’t of Econ. Sec.*, 223 Ariz. 86, ¶ 18 (App. 2009). Put another way, we will not reverse a termination order for insufficient evidence unless, as a matter of law, no reasonable factfinder could have found the evidence satisfied the applicable burden of proof. *See Denise R. v. Ariz. Dep’t of Econ. Sec.*, 221 Ariz. 92, ¶ 10 (App. 2009).

¶9 The juvenile court may terminate a parent’s rights if it finds by clear and convincing evidence that at least one of the statutory grounds for termination exists and by a preponderance of the evidence that termination of the parent’s rights is in the child’s best interests. A.R.S. §§ 8-533(B), 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41 (2005). In considering whether this standard has been met, we defer to the juvenile court, as the factfinder, to determine witness credibility and resolve conflicts in the evidence. *Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278, ¶ 12 (App. 2002).

¶10 Pursuant to § 8-533(B)(8)(c), the juvenile court can sever a parent’s rights if (1) the “child has been in an out-of-home placement for a cumulative total period of fifteen months or longer,” (2) “the parent has been unable to remedy the circumstances that cause the child to be in an out-of-home placement,” and (3) “there is a substantial likelihood that the parent will not be capable of exercising proper and effective parental care and control in the near future.” The court must construe “the circumstances that cause the child to be in an out-of-home placement,” § 8-533(B)(8)(c), as those existing at the time of the severance, rather than the initial

AMYMARIE L. v. DEP'T OF CHILD SAFETY
Decision of the Court

dependency petition. *See Marina P. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 326, ¶ 22 (App. 2007). In addition, § 8-533(B)(8) requires that “the agency responsible for the care of the child has made a diligent effort to provide appropriate reunification services.”

¶11 Amymarie concedes that M.P. was in an out-of-home placement for more than fifteen months. However, she argues, “There is no evidence to support a claim that [she] is unable to parent M.P., as shown by [her] successful reunification with D.P., as well as her ability to adapt and change her parenting of D.P. after his return for the better.” She asserts that D.P. was returned to her, “despite the [juvenile] court’s misgivings, and no further evidence was presented as to [her] inability to also parent M.P.” We disagree.

¶12 As the juvenile court noted, M.P. and D.P. are “very different children.” Amymarie herself agreed, “[H]e’s not anything like her.” As a result, M.P. and D.P. react differently to situations and have distinct needs. Thus, although Amymarie reported that her parenting of D.P. had improved through the dependency, the required change in circumstances as it related to M.P. was necessarily different.

¶13 The circumstances that led M.P. to be in an out-of-home placement included safety risks based on Amymarie’s abuse. According to a psychologist, M.P. met the criteria for “severe emotional abuse” and was “very depressed, anxious, and fearful.” M.P. felt “discounted and excluded,” and she feared her mother would “become abusive” upon her return home. The psychologist thus recommended family therapy and cautioned that returning M.P. to Amymarie without them working through their problems could result in “a worsened mental health condition” for M.P. Another psychologist opined that Amymarie needed therapy because without “some professional intervention, it might be very difficult for her to not repeat the same behavior.” Consistent therewith, DCS requested that Amymarie complete both individual therapy and family therapy, among other services. Throughout the dependency, the juvenile court consistently found DCS was making reasonable efforts to provide Amymarie with services.

¶14 Amymarie, however, failed to complete individual therapy, and the therapist terminated family therapy because she did not feel they were making any progress, largely due to Amymarie’s “pattern of addressing problems through assigning blame.” In addition, Amymarie’s refusal to discuss certain issues hampered completion of other services. For

AMYMARIE L. v. DEP'T OF CHILD SAFETY
Decision of the Court

those services that Amymarie did complete, she failed to benefit in that, at the time of the contested severance hearing, she still had not taken responsibility for her actions, which caused the children to be in an out-of-home placement, and she had not been able to demonstrate empathy toward M.P.

¶15 A caseworker testified that Amymarie would not be able to parent M.P. in the near future because she had not made any changes to overcome M.P.'s fear, to provide M.P. with stability, or to reestablish trust. Indeed, the record is replete with examples of Amymarie's indifference toward M.P., including the following exchange from the contested severance hearing:

Q. Do you want [M.P.] back in your home?

A. I don't have an answer for you.

Q. You can say yes or no?

A. For me it's not a yes or a no.

Q. So if [M.P.] could go home today, would you want her home?

A. I don't have an answer for you.

Q. So it's fair to say you don't want her?

A. If you want to assume that, that's your assumption.

When asked whether she was willing to take steps to resume visitation with M.P., Amymarie similarly would not answer.

¶16 In sum, as the caseworker explained, "Amymarie appeared to be more kind and more loving towards [D.P.]," perhaps explaining why he wanted to return home, while she failed to take meaningful measures to repair her relationship with M.P., continuing to create fear and anxiety for her daughter. Accordingly, reasonable evidence supports the juvenile court's termination order based on length of time in care. *See Jordan C.*, 223 Ariz. 86, ¶ 18.

AMYMARIE L. v. DEP'T OF CHILD SAFETY
Decision of the Court

Disposition

¶17 For the foregoing reasons, we affirm the juvenile court's ruling terminating Amymarie's parental rights to M.P.